

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

HERBERT G. POLK,)
Petitioner,)
vs.)
JUSTIN JONES, Director,)
Respondent.)

JUN 29 2006

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY *BS* DEPUTY

No. CIV-06-278-W

ORDER

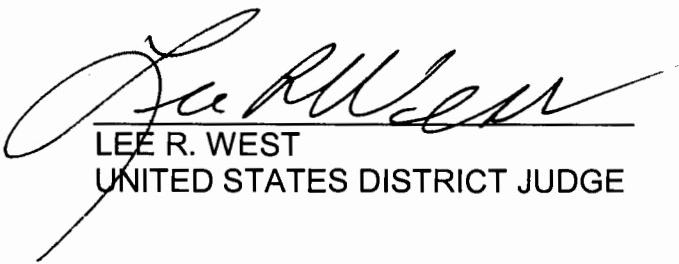
On April 10, 2006, United States Magistrate Judge Gary M. Purcell issued a Supplemental Report and Recommendation in this matter and recommended that the Verified Application for Subsequent Writ of Habeas Corpus ("Application") filed by applicant/petitioner Herbert G. Polk be transferred to the United States Court of Appeals for the Tenth Circuit. Polk was advised of his right to object to the Supplemental Report and Recommendation, but he has filed no objections within the allotted time.

Upon review of the record, the Court concurs with Magistrate Judge Purcell's suggested course of action. Title 28, section 2244 of the United States Code provides that "[b]efore a second or successive application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Because Polk has again sought to challenge the convictions and sentences he is serving or will serve (and/or the convictions and sentences used to enhance the same), all of which he has challenged in previous habeas petitions, the Court finds that Polk must seek authorization from the Tenth Circuit to file a successive application.

Having determined that transfer of the instant Application to the appellate court is warranted, the Court

- (1) ADOPTS the Supplemental Report and Recommendation issued on April 10, 2006; and
- (2) DIRECTS the Clerk of the Court to transfer Polk's Application to the United States Court of Appeals for the Tenth Circuit.

ENTERED this 29th day of June, 2006.


LEE R. WEST
UNITED STATES DISTRICT JUDGE